

**IN THE HIGH COURT AT JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ELECTION PETITION NO. 23 OF 2014

Satyajeet @ Nana Shivajirao Kadam,

R/o Shinde Residency, Ruikar Colony,

Kolhapur

...PETITIONER.

Versus

Rajesh Vinayak Kshirsagar,

R/o 2400, C/Ward, Shaniwar Peth,

Kolhapur.

....RESPONDENT.

Mr. Pralhad D. Paranjape, advocate for Petitioner.

Mr. A.S. Rao i/b. Mr. P.C. Kamble, advocate for respondent.

**CORAM : SMT. SADHANA S. JADHAV, J.
RESERVED ON DECEMBER 19, 2018
PRONOUNCED ON MARCH 19, 2019.**

JUDGMENT:

1 The Petitioner herein challenges the election of the respondent, who has been declared elected from Constituency No. 276, Kolhapur North during the election of the Maharashtra Legislative Assembly held on 15/10/2014. The Petitioner herein had also contested the said election as official candidate on the ticket of Indian Congress Party, whereas the Respondent was contesting the election on the ticket of Shivsena party. The main contention of the petitioner is that the respondent has not disclosed all

Talwalkar

the offences registered against him at various police stations in which he is charge-sheeted for offences which are punishable for more than two years. It is contended that there is suppression of facts. That, he has not complied with the mandate of section 33A(1)(i) and Rule 4A of the Representation of People's Act which has caused improper acceptance of his nomination paper by the Returning Officer and therefore his election is liable to be set aside.

2 The ground of challenge would in fact, commence from the very day of the filing of the nomination i.e. 27/9/2014. The respondent herein had filed his affidavit under Rule 4A of the Conduct of Election Rules, 1961 on 25/9/2014. The last date for filing of the nomination was 27/9/2014. The date for scrutiny of the nomination was 29/9/2014. The date of polling was 15/10/2014 and the result/declaration of the polling was on 19.10.2014.

3 The petitioner herein had secured 47315 votes, whereas the respondent was declared elected as he had secured 69736 votes. The second candidate who got majority votes was the petitioner. At that stage, there was no reason for the petitioner to object to the acceptance of the nomination of the respondent, as he had not anticipated that there would be suppression of facts by a person who wanted to get elected from amongst public.

4 The petitioner had learnt from reliable source that some of the offences registered against the respondent have not been disclosed in his affidavit filed under Rule 4A of the Conduct of Election Rules, 1961. To verify the genuineness of the said information, the Petitioner had filed an application under the Right to Information Act, 2005 to the Sub-Divisional Police Officer on 26/11/2014. The petitioner had received the reply on 1/12/2014. Hence, the present petition was filed on 3/12/2014 without loosing any further time in order to file the election petition within the limitation.

5 The petition has been filed on various amongst other ground. The substantial ground being that the respondent has not furnished all the requisite information, which needs to be furnished under Article 324 of the Constitution of India and under the Representation of Peoples Act. According to the petitioner, there has been suppression of facts in as much as the respondent has not mentioned more than 3 cases where charge-sheet is filed against the respondent and process is issued for the offences, which are punishable for more than 2 years. The petitioner has stated in paragraph-8 of the petition that upon applying under the Right to Information Act, he had learnt that C.R. No. 46 of 2013 and C.R. No. 15 of 2014 were registered at Juna Rajwada Police Station, as also C.R. Nos. 42 of 2006, 10/2009, 124/2010, 94/2011, 151/2011, 36/2012, 10/2003 and 2/2014 and similarly C.R. Nos. 12/2014, 96/2013, 120/2013, 103/2012,

361/2008 registered at Shahupuri Police Station. It is also stated that there are some criminal cases, which have been mentioned by the respondent in his mandatory affidavit, but without giving proper description of the said criminal cases and without giving details as to which of the cases are punishable for more than two years.

6 After filing the election petition, the petitioner had filed an Application bearing No. 7 of 2016 on 18th March, 2016 seeking amendment to the petition in order to give better particulars and details about the offences not just registered, but in which charge-sheet was filed and process was issued. The said application was heard on 24/4/2017. The then learned Counsel for the Petitioner had submitted that the amendment application has been filed only to amplify and substantiate the contentions raised in paragraph-8 of the memorandum of the Petition, as the petitioner had received information under the Right to Information Act, 2005 after the draft memorandum of election petition was finalised and hence, the petitioner desires to furnish better particulars.

7 It was the contention of the learned Counsel for the respondent that all issues raised in the amendment application had been covered in paragraph-8 of the election petition. At the same time, learned Counsel for the respondent had submitted that as long as the Court is of the opinion that the amendment amounts to furnishing better particulars of the

contentions raised in paragraph-8 of the petition memo, the learned Counsel for the respondent would have no objection.

8 It was agreed that the amendment does not amount to substitution or addition of any of the contentions raised in paragraph-8 of the election petition and therefore, no prejudice would be caused to either parties as the whole issue would be subject to recording of evidence. At that stage, it was made clear that Crime No. 1 of 2013 registered at Laxmipuri Police Station was not stated in the memorandum of election petition and it was submitted that C.R. No. 1 of 2013 is registered at Laxmipuri Police Station but charge-sheet was filed after filing of the election petition. Needless to state that neither charge-sheet was filed nor cognizance was taken prior to 25/9/2014 and hence Crime No. 1/2013 would be kept beyond the purview of the challenge to the election petition. The amendment was carried out in the petition and taken on record. The reason for keeping Crime No. 1 of 2013 registered at Laxmipuri Police Station beyond the purview of the present election petition is that on 24th April, 2017 it was submitted that at the time of filing of the election petition, Crime No. 1 of 2013 was under investigation and charge-sheet was not filed and therefore, despite due diligence, the petitioner could not have furnished better particulars in the pleadings of the election petition.

9 In the amendment at paragraph-8A the petitioner has submitted

that he has received certified copy of the charge-sheet filed on 23/1/2013 in C.R. No. 1 of 2013 registered at Laxmipuri Police Station for offence punishable under section 143, 148, 149, 324, 323, 504 of the Indian Penal Code out of which punishment prescribed under section 148, 324, 504 is for 2 years and more. Needless to say that these are inherently inconsistent contentions raised by the then learned Counsel for the Petitioner. Paragraph-8B is in respect of the charge-sheet dated 3/3/2014 in Crime No. 120/2013 registered at Shahupuri Police Station, in which the process is issued on 3/7/2014 under section 143, 147, 148, 149, 353, 338, 427 of the Indian Penal Code. Paragraph 8C is in respect of charge-sheet in C.R.No. 103/2012 registered at Shahupuri Police Station in which process is issued against the respondent on 3/7/2014 for offence punishable under section 143, 147, 341 of the Indian Penal Code and section 135 of the Bombay Police Act. Paragraph 8D is in respect of the charge-sheet in C.R.No. 361 of 2008 registered at Shahupuri Police Station in which process is issued on 6/4/2010 for offence punishable under section 368, 341, 342, 323, 504,506 read with section 34 of the Indian Penal Code. According to the learned Counsel for the petitioner, the said offences were suppressed by the respondent.

10 The learned Counsel for the petitioner has placed on record the affidavit filed by the respondent on 25/9/2014, in which the respondent has stated that 20 cases are pending and in some of these cases cognizance is

taken by the learned Magistrate. The offences in which the cognizance is taken are about 20 offences registered at various police station.

11 The respondent has filed written statement to the election petition. It was the contention of the respondent that-

(i) There is non-compliance of the provisions of section 83(1)(A) of the Representation of People Act. It was contended that in view of provisions of section 83 of the Act, it is mandatory for the petitioner to file election petition which contains concise statement of material facts.

(ii) That the petition is filed beyond period of limitation as 3/12/2014 falls on 45th day from the date of declaration of the result of the election.

(iii) There has been sufficient compliance of the section 33(A)(1) of the Representation of People Act.

(iv) There is failure on the part of the petitioner to point out categorically as to which cases are suppressed in the affidavit filed under Rule 4A

(v) There is failure to plead which cases are punishable with more than 2 years and where the charge is framed. Therefore, material facts are not pleaded.

(vi) There is no averment that the respondent has not complied with section 33A(1)(i) of the Representation of Peoples Act.

(vii) It is denied that the nomination was improperly accepted.

Talwalkar

(viii) It is not mandatory to disclose about the pending appeals or revisions.

(ix) So far as Crime No. 10/2003 is concerned, as mentioned by the petitioner, the petitioner has not received any such information under Right to Information Act which discloses C.R. No. 10/2003 registered at Laxmipuri Police Station. But it is admitted that in fact C.R. No. 10/2003 is registered at Laxmipuri Police Station and said case is punishable with imprisonment for 2 years or more and the charges in the said crime has been framed. It is therefore, submitted that the nomination of the respondent has been properly accepted within the meaning of section 100(1)(d)(iv) of the Representation of Peoples Act.

(x) It is submitted that in the facts of the case and material on record, section 100(1)(d)(4) are not applicable in the present case. It is stated that the respondent has made the best of efforts to disclose almost all cases registered against him in which the respondent has been served with summons and on the basis of the information gathered from the police authorities.

12 The petitioner and respondent had filed draft issues and had agreed upon the following issues:

(a) Whether Election Petition is barred by limitation?

(b) Whether the Election Petition is maintainable in view of the

material brought on record by way of amendment to the pleadings in the Election Petition?

(c) Does the Election Petitioner prove that there has been an inappropriate acceptance of the nomination filed by the respondent ?

(d) Does the Petitioner prove that there has been suppression of the facts as far as criminal cases registered against the respondent while filing mandatory affidavit in Form-26 filed alongwith nomination paper?

(e) Does the Petitioner prove that the respondent failed to comply with the provisions of the Constitution of India, especially directions issued under Article 324 of the Constitution of India ?

(f) Does the Petitioner prove that the result of the election was materially affected due to inappropriate acceptance of nomination form of the respondent ?

(g) Does the Petitioner prove that the respondent failed to comply with the provisions of section 33A of the Representation of People Act, 1951 and Rules and Orders made under the Representation of People Act, 1951 ?

(h) Does the respondent prove that the Election Petition is liable to be dismissed for non-compliance of section 83 of the Representation of People Act, 1951 ?

(i) Does the Petitioner prove that the election of the respondent from constituency No. 276, Kolhapur North Constituency of the Maharashtra Legislative Assembly Elections held on 15/10/2014 of which

result was declared on 19/10/2014 is void as per the provisions of Section 100(1)(d)(i) & 100(1)(d)(iv) of the Representation of the People Act, 1951 and therefore deserves to be set aside ?

13 On 16th April, 2018 the petitioner filed affidavit in lieu of examination in chief. The first four paragraphs are in consonance with the memorandum of election petition. In paragraph-5 it is stated that there has been suppression of criminal cases in which the Court has taken cognizance. The petitioner has relied upon a true copy of the affidavit filed by the respondent on 25/9/2014 and has tendered English translation of the same. That he had obtained knowledge with respect to criminal cases pending against respondent which was in fact, not disclosed by him in the affidavit and therefore, filed an application under Right to Information Act and on the basis of the said information has filed the election petition. The emphasis seems to be on the charge-sheet filed on 3rd March, 2014 in C.R. No. 120 of 2014 registered at Shahupuri Police Station and that process is issued on 3/7/2014; C.R. No. 103 of 2012 in which charge-sheet is filed on 3/7/2014 and process is issued on 3/7/2014 and C.R. No. 361 of 2008 in which the process is issued on 6/4/2010. In C.R. No. 1 of 2013 process is issued and charge-sheet was filed on 23/1/2013. The certified copy of the said charge-sheet has been received from the trial Court on 16/1/2016 and hence, it is a public document. The petitioner had furnished the copy of the charge-sheet of the said case.

14 Upon verification, it is seen that in Crime No. 103 of 2012 the case was withdrawn on 6/5/2016. In Crime No. 1 of 2013 process was issued and the same was not mentioned. Needless to say that thrust is upon 3 cases mentioned in paragraphs-8B, 8C and 8D.

15 The petitioner was examined on oath on 20/4/2018. It is reiterated that the respondent has suppressed information about many criminal cases in which the Court has taken cognizance. That in the above mentioned 3 cases which are suppressed, punishment prescribed is imprisonment for 2 years or more. The petitioner has mentioned the dates on which he has received the information. It is submitted that for non-compliance of the mandatory provisions, returning officer ought not to have accepted nomination paper. It was therefore, prayed that the election of the respondent be declared null and void and the petitioner be declared as an elected candidate from assembly constituency No. 276, Kolhapur North, who had secured second highest vote than that of respondent. Cross-examination was conducted on 15/6/2018. It is admitted in the cross-examination that the petitioner was present at the time when the nomination papers of respondent were submitted. He had no knowledge as to whether any other candidate raised objection at the time of scrutinizing the nomination form. According to the petitioner, there are 14 cases mentioned in paragraph-8 as well as four cases by way of

amendment in paragraphs 8A, 8B, 8C and 8D, the information of which the petitioner had received under the Right to Information Act.

16 That he would insist upon his claim to be declared as an elected candidate by setting aside the claim of the respondent. It is admitted that there is no prayer to that effect and yet he has insisted upon the said claim. That he has simplicitor stated about the registration of offence against the respondent and four charge-sheets. That he had no knowledge about the prosecution withdrawing proceedings in SCC No. 2342 of 2014 on 6/5/2016. That no summons was issued against respondent in SCC No. 2342 of 2014. That he had no knowledge that charge is framed against respondent in Case No. 233 of 2010 on 20th March, 2017. He had no knowledge as to whether summons was served upon the accused in C.R. No. 1 of 2013. That the criminal cases registered against returning candidate which do not find place in Form No. 26 is not on the basis of his own knowledge but from the information which he solicited from the police station. There is no other material brought by him on record besides amendment in paragraphs 8A to 8D. The questions were put in respect of Criminal Revision Application No. 65 of 2014.

17 The respondent had filed an Application No. 1 of 2018 seeking to summon Dr. Manoj Kumar Sharma, the Superintendent of Police as a witness. The said application was allowed. Dr Manoj Sharma was

Talwalkar

summoned. He was questioned about the information given to the respondent about the number of cases under the Right to Information Act. He was examined as a witness for the respondent in order to substantiate that the affidavit under Rule 4A was filed on the basis of the information received from the police.

18 As far as Issue No. (a) is concerned, it is held that the election petition has been filed within limitation. The maintainability of the election petition needs no discussion as the maintainability was challenged formally. The case rests on the issues (d), (e), (f), (g), (h) and (i). It is true that there has rather been suppression of the facts as far as criminal cases mentioned in the amendment to paragraph-8A to 8D. In the concise statement of facts, it is stated that six items of disclosure set out in form-26 under Rule 4A of the Conduct of Election Rules as also in the order dated 27th March, 2003 of the Election Commission of India are mandatory and cannot be left out of the affidavit required to be filed by the candidate before the returning officer for his election.

19 The petitioner has contended by way of written submissions that undisputedly the said criminal cases brought on record by way of amendment to paragraph-8 of the memo was required to be filed by the respondent at the time of filing the affidavit alongwith Rule 4A of the Conduct of Election Rules. It is submitted that the amendment to

paragraph-8 did not amount to substitution or addition of any of the contentions raised in paragraph-8 and therefore, no prejudice would be caused. In paragraph-8A, the petitioner has given details of charge-sheets in Crime No. 1 of 2013 registered at Laxmipuri Police Station for offence punishable under section 143, 148, 149, 324, 323, 504 of the Indian Penal Code. In paragraph-8B, the petitioner states that he has received certified copy of the Charge-sheet in Crime No. 120 of 2013 registered at Shahupuri Police Station for offence punishable under section 143, 147, 148, 149, 353, 338, 427 of the Indian Penal Code and 135 of the Bombay Police Act, which was filed on 3/3/2014 and process was issued on 3/7/2014. In paragraph-8C, the petitioner has given details of charge-sheet in Crime No. 103 of 2012 registered at Shahupuri Police Station for offence punishable under section 143, 147, 341 of the Indian Penal Code and section 135 of the Bombay Police Act. In paragraph-8D, the petitioner has given details of charge-sheet in Crime No. 361 of 2008 registered at Shahupuri Police Station for offence punishable under section 368, 341, 342, 323, 504, 506, 34 of the Indian Penal Code.

20 It is submitted that since the respondent had admittedly suppressed some of his antecedents, his election was liable to be declared null and void. As far as SCC No. 234 of 2014 is concerned, the Charge-sheet was filed on 6/5/2016 and process was issued on the same day. In any case, it was mandatory upon the respondent to file details about the same.

Talwalkar

It was incumbent upon the contesting respondent to collect all the information and thereafter, file nomination. The petitioner has also submitted that the respondent had not verified the factual aspect of the data and his disclosure was based on the information received from the Sub-Divisional Police Officer. It is also submitted that the respondent need not rely upon the information received under the Right to Information Act as these facts are within his knowledge.

21 The learned Counsel for the petitioner has cited following Judgments :

- (1) Kisan Shankar Kathore v/s. Arun Dattatray Sawant & ors. Reported in (2014) 14 SCC 162.
- (2) People's Union for Civil Liberties (PUCL) and another v/s. Union of India and anr. Reported in (2003) 4 SCC 399.
- (3) Resurgence India v/s. Election Commission of India and anr. Reported in (2014) 14 SCC 189.

22 The learned Counsel for the respondent has cited following judgments :

- (1) Anil Saran v/s. State of Bihar and anr. Reported in (1995) 6 SCC 142.
- (2) S.R. Sukumar v/s. S. Sunaad Raghuram reported in (2015) 9 SCC 609.

- (3) Charan Lal Sahu v/s. Giani Zail Singh and anr. Reported in (1984) 1 SCC 390
- (4) People's Union for Civil Liberties (PUCL) and another v/s. Union of India and anr. Reported in (2003) 4 SCC 399.
- (5) Satish Mahadeo Rao Uke v/s. Devendra Gangadhar Fadnavis reported in 2016(2) Mh. L.J. 613. Etc.

23 Learned Counsel for the petitioner has placed implicit reliance upon the Judgment of the **Peoples Union for Civil Liberties (PUCL) V/s. Union of India & anr. reported in (1998) 4 SCC 399**, wherein the Supreme Court has held that the voter has fundamental right under Article 19(1)(a) to know the antecedents of the candidate for various reasons recorded in the earlier Judgments of the Supreme Court. The learned Counsel has placed emphasis on the observations of the Hon'ble Apex Court as follows :

“The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

The Court has to take a holistic view and adopt a balanced approach, keeping in view the twin principles that the citizens' right to information to know about the personal details of a candidate is not an unlimited right and that at any rate, it has no fixed concept and the legislature has freedom to choose between two reasonable alternatives. It is not a proper approach to test the validity of legislation only from the stand- point whether the legislation implicitly and word to word gives effect to the directives issued by

the Court as an ad hoc measure when the field was unoccupied by legislation.”

24 The learned Counsel for the Petitioner has placed implicit reliance on the Judgment of the Supreme Court in the case of **Kisan Shankar Kathore v/s. Arun Dattatray Sawant and others reported in 2014 (14) SCC 162.** The Supreme Court has observed as follows:

“43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged.”

25 It is submitted on the basis of the above mentioned

Judgment that the crux of the said judgment is that the voter has unequivocal right to know about the antecedents of the candidates. In the present case there are cases pending against the respondent. Various cases have been disclosed by the respondent and the cases mentioned in the petition have been intentionally and willfully suppressed by the respondent. The case of the respondent is that the police authorities have not provided him with the details of the cases and the said aspect cannot be considered as the respondent in the said cases has been bailed out and he has been appearing in the trial and therefore, it can be said that the respondent has clearly failed to comply with the provisions of Constitution of India especially the directions issued under Article 324 of the Constitution of India.

26 The sum and substance of the petition is that the petitioner in his affidavit of evidence has given evidence essentially about the four cases which have been registered and which are pending in the courts in Kolhapur and where the Court has taken cognizance are suppressed by the respondent i.e. C.R. No. 120 of 2013 registered at Shahupuri Police Station which is not mentioned in the mandatory affidavit and in which process was also issued prior to filing of the nomination ; Crime No. 103 of 2012 registered at Shahupuri Police Station in which process is issued on 3/7/2014 and is registered at Summary Criminal Case No. 2342/2014 and the proceedings have been withdrawn on 6/5/2016. The third case is Crime

No. 361 of 2008 which is registered as R.C.C. No. 233 of 2010 in which process has been issued on 6/4/2010 and Crime No. 1/2013 in which process is issued on 25/9/2014.

27 The learned Counsel for the respondent has submitted that in view of the fact that in the course of cross-examination the petitioner has sought declaration that after setting aside the election of the respondent, the petitioner desires to be declared as an elected candidate of the said constituency and calls for framing of an additional issue to the extent that “whether the respondent proves that the election petition is liable to be summarily dismissed as the petitioner has not joined 16 other contesting candidates as party respondents to the election petition. In any case, this Court is of the opinion that it would not be necessary to frame said issue at this stage. There was no prayer to that effect in the election petition. The petitioner has succumbed to the suggestion of the cross-examiner as to whether he desires to be declared as an elected candidate. Hence, the said submission need not be taken into consideration.

28 The respondent has submitted that in paragraph-8 of the election petition, the petitioner has not mentioned as to in which cases, charge is framed and in which cases, cognizance is taken and hence, petition does not disclose a charge against the respondent either under section 33(A)(1)(i) of the Representation of People's Act or under Rule 4(A)

of the Conduct of the Election Rules, 1961 read with Form No. 26. Section 33A reads as follows :

“33A. Right to information.—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether – (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;”

29 Upon perusal of the copy of the affidavit filed by the respondent, it is seen that he has mentioned the cases in which cognizance has been taken. However, he has not mentioned the quantum of punishment contemplated for the said offences. The petitioner is placing implicit reliance upon the four cases. Leave to amend was granted in order to enable the petitioner to furnish better particulars.

30 According to the learned Counsel for the respondent, the material facts were not pleaded in the election petition and therefore, subsequent amendment for furnishing better particulars was not warranted.

31 It is pertinent to note that this Court has taken note of the fact

that Crime No. 1 of 2013 registered at Laxmipuri Police Station is mentioned in the election petition. However, charge-sheet is filed after filing of the election petition. In the election petition itself, the petitioner has not mentioned criminal case No. 1 of 2013 and therefore, there was no question of furnishing better particulars and the said submission needs to be taken into consideration as it pertains to the material fact that the petitioner could not have furnished better particulars of Crime No. 1 of 2013 as it was not mentioned in paragraph-8 of the Election petition.

32 It is submitted that as per section 83(1)(a), an election petition is required to set out a concise statement of the material facts on which the petitioner is relying. Section 83 of the Representation of People's Act contemplates as follows:

83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

In the present case, only section 83(1)(a) would be applicable. There is no allegation of corrupt practice. Hence, section 83(1)(b) would not be applicable.

Talwalkar

33 According to the learned Counsel for the respondent, the statement filed by the petitioner does not amount to concise statement of material facts as in paragraph-8(a) to 8(e) the election petitioner has not set out the material facts i.e. the petitioner has merely mentioned the numbers of the concerned cases allegedly registered against the respondent. The material facts as to in which of cases, the charge is framed is not set out. Therefore, the petition deserves to be dismissed. It is vehemently submitted that filing of charge-sheet does not amount to taking cognizance by the court. Taking of cognizance is a stage where a court or a magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such offence is said to have been committed by someone. It is a condition precedent to the initiation of the proceedings by the magistrate or the judge. Cognizance is taken of case and not of person. Needless to reiterate that filing of the charge-sheet would not amount to taking of cognizance. It is true that in the affidavit filed by the respondent, there is no mention about the framing of charge but he has stated the numbers of the cases registered as Regular Criminal Cases in which it is mentioned that cognizance has been taken. According to the petitioner, offences in which charge-sheet has been filed have not been mentioned and the reference is only to 3 cases.

34 In the case of **Minu kumari v/s. State of Bihar reported in**

(2006) 4 SCC 361, the Hon'ble Apex Court has observed thus :

“When a report forwarded by the police to the Magistrate under [Section 173\(2\)\(i\)](#) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under [Section 156\(3\)](#) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under [Section 156\(3\)](#).”

35 It is elicited in the cross-examination that the petitioner was not aware as to whether summons/warranted has been served upon the respondent not whether he has enquired as to whether the magistrate has taken cognizance or not and therefore, it can be safely held that the petitioner has failed to prove non-compliance of Rule 4(A) read with form-26, which is as follows :

“4A. Form of affidavit to be filed at the time of delivering nomination paper .—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class

or a Notary in Form 26."

Column No. (5) of Form 26 of the Conduct of Election Rules, 1961 reads as follows :

"(5) I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction. If the deponent is accused of any such offence(s) he shall furnish the following information:

(i) The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more :-

....

(ii) The following case(s) is/are pending against me in which cognizance has been taken by the court other than the cases mentioned in item (i) above):-"

36 It is true that the respondent has not mentioned about the cases in which the charges have been framed. It is the contention of the respondent that he had filed an application under the right to information Act seeking information from the police about the cases pending against him and has filed an affidavit on the basis of the said information. It is in this background that the respondent had filed an application seeking to issue summons to Dr. Manoj Kumar Sharma who was then Officiating as Superintendent of Police for 2 years in Kolhapur and was incharge of Law and Order in Kolhapur as well as Crime Cell of Kolhapur District. In his evidence, he has proved the letter dated 15/9/2014 filed by the present respondent. He had admitted that his office had given requisite information to the respondent and the same is signed by him. It is also admitted that the information given by the letter dated 20/9/2014 is based on manual verification of the data as there was no specific data collection

system which was introduced only in the year 2016. However, it does not automatically mean that he has personally verified the factual aspect or the data in respect of Shri Rajesh Kshirsagar as the information has been given by the subordinates and signed by Dr. Manoj Kumar Sharma. The learned Counsel for the respondent has placed reliance upon the Judgment of the Apex Court in the case of **Anil Saran V/s. State of Bihar and anr. Reported in (1995) 6 Supreme Court Cases 142**, wherein the Apex Court has held that -

“the court takes cognizance of the offence and not the offender. As soon as the Magistrate applies his judicial mind to the offence stated in the complaint or the police report etc, cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence.”

37 The learned Counsel for the respondent has placed reliance on the Judgment of the Nagpur Bench of this Court in the case of **Satish Mahadeorao Uke v/s. Devendra Gangadhar Fadnavis**. That was a case in which the court was dealing with the application under Order 7 Rule 11(a) of the Code of Civil Procedure, 1908 claiming rejection of the petition at the threshold for cause of action for want of pleading of material facts. The Court was considering section 83(A) of the Representation of People's Act and had observed that -

“all the facts, which are essential to clothe the petition with complete

cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of [Section 83\(1\)\(a\)](#) of the said Act, resulting in dismissal of the election petition at the threshold under Order VII, Rule 11(a) of the Civil Procedure Code for failure to disclose complete cause of action. The entire chain of material facts leading to a relief claimed in the petition should be complete and any missing in the link shall result in failure to disclose the cause of action."

The learned Counsel for the petitioner at this stage submits that the Apex Court has issued notice in the said matter.

38 It is settled position that the requirement of Section 33A(I)(i) is mentioning of offences punishable with imprisonment of two years or more in a pending case, in which a charge has been framed. The petitioner has misconstrued that filing of charge-sheet amounts to taking of cognizance or framing of charge. Rule 4(a) contemplates mentioning of offences in which cognizance is taken and charges are framed. The petitioner has not mentioned about framing of charges. The respondent also has collected information only from the police authorities and has not mentioned as to whether in all or some of the cases, the charges have been framed. The fact that the petitioner is alleging non-compliance of Section 33A(1)(i), it was necessary to plead the same and bring it on record as to

whether the offences mentioned in paras nos. 8(a), 8(b), 8(c) and 8(d) are the cases, in which the charge has been framed. Hence, the petition lacks material particulars to substantiate that there is non-compliance of Section 33A(1)(i) and Rule 4(a) of the Representation of Peoples Act, 1951.

39 The learned Counsel for the respondent has further stated that the issue of improper acceptance of the nomination would not arise in the present case. It is true that no objections were raised at the stage of nomination by the petitioner or any other candidates against the respondent. The Returning Officer had no particulars and would not have been called upon to examine and verify as to whether each and every offences registered against the respondent or charge-sheet is filed or cognizance is taken of offences which are punishable for more than 2 years. It is submitted that in fact, this petition ought to have been dismissed at the threshold.

40 The petitioner has stated about 3 cases not mentioned by the respondent, where the charge-sheet is filed but there is no reference to cognizance. The learned Counsel for the respondent has vehemently objected to the proceedings of the Election Petition on the basis that some of the issues have not been framed properly. In the case of **Ram Sarup Gupta (dead) by L.R.s v/s. Bushan Narain Inter college and others.** **reported in 1987(2) SCC 555,** it is observed as follows :

“In the absence of pleadings, evidence, if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise.”

41 At this stage, the learned Counsel for the petitioner submits that no pedantic approach can be adopted to defeat justice on hair splitting technicalities. Much emphasis is placed upon the right of the electorate to know about criminal antecedents of the contesting candidates. It is submitted that it is one of the fundamental right and for the same, the petitioner has placed implicit reliance on the Judgment of the Apex Court in the case of **Kisan Kathore(Cited supra)**. On the basis of the submissions made by the learned Counsel for the petitioner and the judgment relied upon by him, this Court has no doubt that the act of voting is form of free expression and this right requires that voters are aware of relevant particulars of a candidate. The electorate has a statutory right to learn about the credentials of contesting candidate, The election law therefore, casts an obligation on the candidates to furnish information relating to their criminal antecedents, educational qualification and assets held by them, their spouse and dependant children. The disclosure is required to enable the voter to form his opinion about the candidate's antecedents. The landmark verdict of the Supreme Court in **Union of India v/s.**

Association for Democratic Reform (2002) 5 SCC 294, holding that the Indian voter has right to have all such information. Failure to disclose the information can lead nullification of the election result. It is settled position that it is beyond the capacity of the returning officer to verify the veracity of the affidavit filed by the candidate as it is not expected from the returning officer to collect the details about the candidate. At the most, if objection is taken by any of the candidate, the returning officer may verify the same but cannot travel beyond it and therefore, it cannot be said that the nomination of the present respondent was improperly accepted.

42 The Supreme Court in the case of **Ram Singh and others vs. Col. Ram Singh, reported in A.I.R. 1986 Supreme Court, page 3** has held as follows :

“If two views are reasonably possible and one in favour of the elected candidate and the other against him, Courts should not interfere with the expensive electoral process and instead of setting at naught, the election of winning candidate should uphold his election giving him benefit of doubt.

43 The landmark judgment in the case of **Kisan Kathore(Cited supra)** placed an additional burden on candidate to be diligent and conscious in complying with the norms of the disclosure. However, every failure to disclose information by the candidate would not amount to material lapse in the nomination. In the present case, in any case Section 33A contemplates disclosure of offences punishable with imprisonment for

2 years or more in pending case in which a charge has been framed by the court of competent jurisdiction. The respondent has mentioned the registration number of the cases and that the cognizance is taken but has not mentioned about the framing of charge or also as to which of the offences are punishable with imprisonment for 2 years or more and has left out to wisdom of the returning officer. There is no doubt that the affidavit has to be filed in Form No. 26, wherein Column No. 5 also contemplates the registration number of the case, in which charges have been framed by the Court in offences punishable with imprisonment for 2 years or more. However, at the same time, a judicial note has to be taken of the fact that the petitioner has also not filed pleadings to the effect that the cognizance is taken, charge is framed etc. It is in these circumstances that this Court needs to take a holistic approach to see that setting aside the election by ignoring lapses in the pleadings would result in dysfunctioning democracy wherein the result of the election or the mandate of the people would be set aside on smallest technicalities. Thus it would not be possible for this Court to allow the petition to travel beyond the pleadings by giving such a latitude to consider the issues which are not specifically pleaded. The Court cannot be oblivious of the fact that the respondent has won legislative mandate from electorate and the same cannot be set aside by considering the pleadings which do not show that non-disclosure of 3 offences in which cognizance has been taken as material fact to defeat the result of the election.

44 The learned Counsel for the petitioner and the respondent have cited various judgments. This Court has considered the law laid down in the above citations.

45 In view of the above said observations, the Election Petition stands dismissed with no order as to costs.

 The Registrar (O.S.)/Prothonotary and Senior Master, High Court Mumbai to take action under section 103 of the Representation of the People Act, 1951.

(SMT. SADHANA S. JADHAV, J)